

**SETTLEMENT AGREEMENT**

**BETWEEN**

**SARA HAMMOND**

**AND**

**TILLY'S, INC. AND WHATEVER! COMPANY**

Sara Hammond ("Hammond"), Tilly's Inc. (herein referred to as "Tilly's") and Whatever Company (hereinafter referred to as "Whatever") (Hammond, Tilly's and Whatever are collectively referred to as the "Parties"), enter into this agreement ("Settlement Agreement") for the purpose of avoiding prolonged and costly litigation to settle Hammond's allegations that Tilly's violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the "Effective Date").

**1. Introduction**

- 1.1. Hammond is an individual who alleges that she seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.
- 1.2. On December 20, 2013 the Governor of California added Diisononyl phthalate (DINP) to the list of chemicals known to the State to cause cancer. DINP is referred to hereafter as the "Listed Chemical".
- 1.3. On or about May 7, 2018, Hammond served Tilly's and related entities and certain relevant public enforcement agencies with a Sixty-Day Notice of Violation sent pursuant to California Health & Safety Code § 25249.7(d) alleging that the Friends Lanyard and ID Holder SKU # 32845112501 (referred to throughout as the "Covered Product") supplied by Whatever and previously sold by Tilly's contained the Listed Chemical (the "Notice").

- 1.4. The Notice alleged that the use of the Covered Product exposed persons to the Listed Chemical, and that Tilly's did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5, *et seq.* ("Proposition 65")).
- 1.5. Whatever represents that it is exempt from the warning requirements of Proposition 65 as it employs fewer than ten employees in its business.
- 1.6. The Parties enter into this Settlement Agreement to settle disputed claims between them concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").
- 1.7. Tilly's disputes Hammond's allegations described in this Settlement Agreement and in the Notice.
- 1.8. By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Tilly's, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, licensees, licensors, suppliers, distributors or retailers of its products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Hammond or Tilly's may have in any other legal proceeding as to allegations unrelated to the Dispute or claims released herein.

**2. Release**

- 2.1. This Settlement Agreement is a full, final, and binding resolution between Hammond, acting in her individual capacity, on the one hand, and (a) Tilly's, and its current owners, parents, subsidiaries, affiliates, sister and related companies, licensees, licensors, suppliers, employees, shareholders, members, officers, directors, insurers, attorneys, predecessors, successors, and assigns and Whatever, the vendor of the Covered Product, (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Product, including but not limited to Tilly's and affiliated entities, distributors, wholesalers, customers, retailers, franchisees, and cooperative members ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to any Proposition 65 listed chemical or the failure to warn about exposure to any Proposition 65 listed chemical arising in connection with the Covered Product sold or otherwise distributed by Tilly's or Whatever Company prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.
- 2.2. Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and the Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could

have been asserted in connection with the Covered Product sold or otherwise distributed by Tilly's up to the Effective Date, including without limitation to the extent that such claims relate to Releasees' or Downstream Releasees' alleged exposure of persons to any Proposition 65 listed chemicals contained in the Covered Product or any failure by Releasees or Downstream Releasees to warn about exposures to any Proposition 65 listed chemical contained in the Covered Product.

- 2.3. Hammond acknowledges that she is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth below are paid in full.

- 2.4. Tilly's release of Hammond and Whatever

Tilly's on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, hereby waives any and all claims against Hammond and Whatever, and their respective attorneys and other representatives, whether in the

course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Product.

2.5. Whatever's release of Hammond and Tilly's

Whatever on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, hereby waives any and all claims against Hammond and Tilly's, and their respective attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Product.

3. **Tilly's Duties**

3.1. Effective on and after the Effective Date Tilly's shall not sell the Covered Product for distribution in California in the future and shall not resume sales of the Covered Product in California unless the product meets the reformulation standard set forth in Paragraph 3.2 or unless Tilly's provides a clear and reasonable warning for any non-reformulated Covered Product that it sells in California.

3.2. Except as provided above, effective on and after the Effective Date, Tilly's agrees to only sell in California, "Reformulated Covered Products." For purposes of this Settlement Agreement, "Reformulated Covered Products" are Covered Products containing no more than 1,000 parts per million (0.1%) DINP in any accessible component ("accessible component" is defined as any component that could be touched by a person during reasonably foreseeable use). In order to determine compliance with this reformulation standard, Tilly's may rely on third party testing from an accredited laboratory.

3.3. The Parties agree that any of the following warnings shall constitute a "Compliant Warning" for the Listed Chemical in the Covered Product:

(a) the text, "**WARNING This product can expose you to chemicals including diisononyl phthalate (DINP), which is known to the State of California to cause**

**cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**" accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word "WARNING" as provided by regulations adopted on or about August 30, 2016; or

(b) the text, "**WARNING Cancer – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**" accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word "WARNING" as provided by regulations adopted on or about August 30, 2016.

The triangular warning symbol specified in Section 3.3 shall be in yellow with a black exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered Product label is not printed using the color yellow.

- 3.4. The Parties agree that the specifications for Compliant Warnings in this Settlement Agreement comply with Proposition 65 and its regulations as of the date of this Settlement Agreement, and with regulations adopted on or about August 30, 2016 and which become effective August 30, 2018.
- 3.5. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, Defendant may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

#### **4. Payments**

- 4.1. Tilly's agrees to pay a total of twenty-three thousand (\$23,000) dollars within ten (10) business days of the Effective Date. All payments shall be made by check and sent via overnight mail with tracking numbers provided to plaintiff's counsel and addressed as follows:

Joseph D. Aglio, Law Corporation  
18314 S. Broadway  
Gardena, CA 90248

and further specified as follows:

- 4.1.1. Civil Penalty: Tilly's shall issue two separate checks for a total amount of one thousand dollars (\$1,000.00) as penalties pursuant to California Health & Safety Code § 25249.12 as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of seven hundred and fifty dollars (\$750.00), representing 75% of the total penalty; and (b) one check to Sara Hammond in the amount of two-hundred and fifty dollars (\$250.00), representing 25% of the total penalty. Additionally, two separate 1099's shall be issued for the above payments. The first 1099 shall be issued to OEHHA, PO Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750.00. The second 1099 shall be issued in the amount of \$250.00 to Sara Hammond be addressed to Sara Hammond C/O Joseph D. Aglio, Law Corporation and shall be delivered to Joseph D. Aglio, Law Corporation, PO Box 3582, Manhattan Beach, CA 90266. At Tilly's request, Hammond's counsel shall provide Tilly's with a W-9 for Hammond.
- 4.1.2. Attorneys' Fees and Costs: twenty-two thousand dollars (\$22,000.00) shall be paid to Joseph D. Aglio, Law Corporation as Hammond's attorney, for reasonable investigation fees and costs, attorneys' fees, and other costs incurred as a result of investigating and bringing this matter to Tilly's attention. At Tilly's request, Hammond's counsel shall provide Tilly's with a W-9 for Joseph D. Aglio, Law Corporation.

**5. Authority to Enter Into Settlement Agreement**

5.1. Hammond represents that she has full authority to enter into and legally bind Hammond to this Settlement Agreement.

5.2. Each individual signing this Settlement Agreement on behalf of Tilly's and Whatever represents and warrants that they have been granted full authority to enter into this Settlement Agreement on behalf of that party and that this Settlement Agreement legally binds that party.

**6. Report of the Settlement Agreement to the Office of the Attorney General of California**

Hammond shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

**7. Execution in Counterparts and Facsimile**

This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to California Civil Code §§ 1633.1-1633.17.

**8. Entire Agreement**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other promises or agreements, oral or otherwise, exist to bind any of the Parties or are being relied on by any of the Parties in connection with the execution of this Settlement Agreement.

**9. Modification of Settlement Agreement**

Any modification to this Settlement Agreement shall be in writing and signed by the Parties.



**10. Application of Settlement Agreement**

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Hammond and the Releasees and Downstream Releasees identified in Section 2 above.

**11. Enforcement of Settlement Agreement**

Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

**12. Notification Requirements**

Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Hammond:

Joseph D. Agliozzo  
Joseph D. Agliozzo, Law Corporation  
PO Box 3582  
Manhattan Beach, CA 90266

For Tilly's:

Raylene Proto  
World of Jeans & Tops d/b/a Tillys  
10 Whatney  
Irvine, CA 92618

With Copy to counsel for Tilly's:

Jay W. Connolly  
Seyfarth Shaw LLP  
560 Mission Street, Suite 3100  
San Francisco, California 94105-2930

For Whatever:

Whatever! Company, Inc.  
Attn: Jason Hallock  
9400 Lurline Avenue, C2  
Chatsworth, California 91311

With Copy to counsel for Whatever:

Joe Donnini  
Donnini Law Group  
1230 Rosecrans Avenue, Suite 300  
Manhattan Beach, California 90266

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

**13. Severability**


If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**14. Governing Law**

The terms of this Settlement Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Product, then Tilly's shall provide written notice to Hammond of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Product is so affected.

SARA HAMMOND

Date: November 30, 2018

By:   
Printed Name: Sara Hammond

TILLY'S, INC.

Date: 12/6/18

By: 

Printed Name: MICHAEL HENRY

Title: CFO

WHATEVER! COMPANY.

Date:

By:

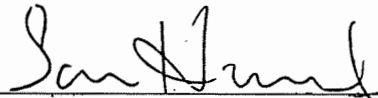
Printed Name:

Title:

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SARA HAMMOND

Date: \_\_\_\_\_

By:   
Printed Name: Sara Hammond

TILLY'S, INC.

Date: \_\_\_\_\_

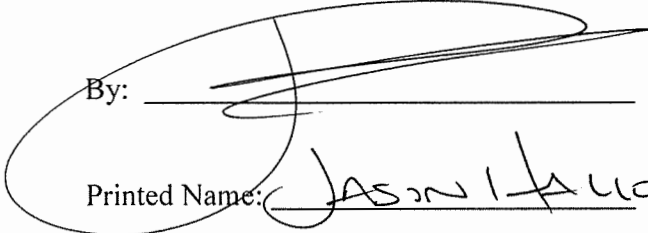
By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

WHATEVER! COMPANY.

Date: December 10, 2018

By: 

Printed Name: Jason H. Hock

Title: PRESIDENT

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